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No. 04-463

Supreme Court, U.S.
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In The

Supreme Court of the United States

JEAN CO., LTD.,

Petitioner,

v.

ELONEX I.P. HOLDINGS, LTD. and
EIP LICENSING, B.V.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Federal Circuit

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

DONALD W. HUNTLEY
HUNTLEY & ASSOCIATES, LLC
1105 N. Market Street,
Suite 800
P.O. Box 948
Wilmington, DE 19899-0948
(302) 426-0610
Counsel for Petitioner

COCKLE LAW BRIEF PRINTING CO (800) 225-6964
OR CALL COLLECT (402) 342-2831

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INTRODUCTION

Respondents' Brief in Opposition to the Petition for Writ of Certiorari demonstrates that the Petition should be granted.

Respondents' position that no demonstrated sales in the chosen forum does not negate jurisdiction is contrary to law and reason.

Rule 4(k)(2) of the Federal Rules of Civil Procedure is inapplicable to the present case, where Respondents had and pursued opportunities to prosecute actual infringers.

ARGUMENT

The present brief is filed in reply to those new points of argument raised in Respondents' Brief filed on December 16, 2004.

1. Respondents' position that no demonstrated sales in the chosen forum are needed for jurisdiction is contrary to law and reason.

Contrary to Respondents' suggestions, Petitioner has not sold any monitor in the U.S. Jean is a Taiwanese computer monitor manufacturer with its main office in Taipei, Taiwan. A163; A706. All of its business offices, factories, and employees are in Taiwan and China. A706. Jean manufactures computer monitors on behalf of branded monitor vendors, such as ViewSonic, eMachines and IBM. A756; A834; A837; A899. These monitors are labeled with the vendors' own logos and trademarks. A891; A900. Jean's customers, who control their own distribution

channels, do not reveal to the retail end-users what supplier made monitors for them.

The holding below is a marked departure from the previous decisions of this Court. For example, in *Asahi*, there was a finding that 20 percent of the sales of the product in question take place in California. (*Asahi Metal Indus. Co. v. Superior Court of Cal.*, 480 U.S. 102 (1987)). There, Justice O'Connor noted that an informal examination of tire tubes had been conducted, and the product in question was, in fact, incorporated into the tires on sale in the jurisdiction in which the action was brought.

In decisions interpreting *World-Wide Volkswagen Corp. v. Woodson,* 444 U.S. 286 (1980), some courts have asserted jurisdiction based on one indirect forum sale as in *Bean Dredging Corp. v. Dredge Technology Corp.*, 744 F. 2d 1081, 1085 (5th Cir. 1984). However, in the instant case, contrary to the Respondents' allegations, there is no evidence of a single sale in the forum in which the action was brought.

It is respectfully submitted that such an extension of jurisdiction is unreasonable under the due process clause of the fourteenth amendment. Particularly in view of the differing interpretations of this Court's decision on *Asahi*, clarification is in order and the present Petition should be granted.

2. Rule 4(k)(2) does not provide Respondents with a cure for deficient jurisdictional evidence.

Respondents alleged, in its Brief in Opposition, that Rule 4(k)(2) was intended to address the kind of situation which this case presents. It is submitted that Respondents' actions and litigation history are inconsistent with its

claiming the benefit of this Rule. The present case is not one in which a potential litigant is barred from access to the courts by a technicality. Respondents have many options in pursuing redress on the basis of a product made by Petitioner, which has found its way into the United States, including actions against computer manufacturers and vendors in this country. In fact, Respondents allege, in their Brief in Opposition to the present Motion, that it has licensed 35 companies under the Patents in Suit with total licenses, settlements, and judgments exceeding $100 million. (Respondents' Brief in Opposition page 2) Respondents are fully capable of pursuing its claims for patent infringement against a variety of defendants, and should not seek to use Rule 4(k)(2) to avoid its evidentiary obligations.

CONCLUSION

It is respectfully submitted that it is time for clarification of *Asahi*, including the question of whether jurisdiction is appropriate in a situation like the present case for patent infringement, in which there is no evidence of a sale of an infringing article in Delaware, much less by the Petitioner. Granting of the Petition for a Writ of Certiorari is in order. Such action is earnestly solicited.

Respectfully submitted,

DONALD W. HUNTLEY
HUNTLEY & ASSOCIATES, LLC
1105 North Market Street
Suite 800
P.O. Box 948
Wilmington, DE 19899
(302) 426-0610
Counsel for Petitioner